

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

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Royalty Inn LLC

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43 V unpaid vacation pay

Employer: Royalty Inn LLC, 130 Main St., Gorham, NH 03581

Date of Hearing: August 11, 2014

Case No.: 48207

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserted, through the filing of her wage claim, that she was owed \$1,240.00 in unpaid vacation pay, which she argues was due upon her termination. She argued the prior owner granted her two weeks of vacation pay, she did not have to accrue it.

The employer submitted a check for one week of vacation pay, \$620.05 gross, prior to the hearing. The claimant chose to continue for the balance of the claim.

The employer denies the claimant is due any further vacation pay. The employer previously submitted the written policy, which states, in relevant part, "All vacations are accrued at one (1) week per 6 months worked. No partial accrual allowed. All employees must complete 6 months to receive any vacation credit. All vacation paid at average workweek if less than 40 hours per week. Before taking a vacation you need to verify it with the General Manager to make sure you are eligible for one, then check with your supervisor to ensure coverage while you are away." Further, her Employee Activation Form signed on August 16, 2013, states, "2 weeks pd. 1 week accrued after 6 months and second week accrued every 6 months.", Defendant's Exhibit #1.

They argue the claimant did earn one week of vacation pay for the six month period of August 1, 2013 through January 31, 2014, which they paid on July 23, 2014. The claimant did not earn her second week of vacation pay because she did not complete the six month period of February 1, 2014 through July 31, 2014, as she was terminated in May 2014. They had not paid the one week she had accrued upon her

termination because the owner did not think it was required to pay terminated employees any vacation pay.

FINDINGS OF FACT

The claimant worked for the employer from July 26, 2013 through May 2014, when she was terminated by the employer. She had worked for the previous owner in the same position.

The employer provided credible testimony that the written vacation policy of the employer did not change from the policy under the previous ownership. They previously submitted a summary of the claimant's vacation accrual and usage from August 2008 through January 2014, in six month increments of August to January and February to July.

RSA 275:49 V requires the employer to make available to employees, in writing or through a posted notice, employment practices and policies with regard to vacation pay. Lab 803.03 (c) requires the employer to inform employees in writing of any change in vacation pay practices or policies prior to the effective date of the change and (f)(6) requires an employer to maintain on file a signed notification of the acknowledgement of the proper notifications.

The employer properly notified the claimant of the written policy and maintained on file the claimant's signed and dated acknowledgement.

The written policy of the employer states, in relevant part, "All vacations are accrued at one (1) week per 6 months worked. No partial accrual allowed. All employees must complete 6 months to receive any vacation credit. All vacation paid at average workweek if less than 40 hours per week. Before taking a vacation you need to verify it with the General Manager to make sure you are eligible for one, then check with your supervisor to ensure coverage while you are away."

The claimant's Employee Activation Form signed on August 16, 2013, states, "2 weeks pd. 1 week accrued after 6 months and second week accrued every 6 months."

The claimant did not complete the six month period beginning February 1, 2014 and ending July, 31, 2014.

Therefore, the Hearing Officer finds the claimant failed to prove by a preponderance of the evidence she is due the claimant vacation pay under the written policy of the employer.

DECISION

Based on the testimony and evidence presented, as RSA 275:43 I requires that an employer pay all wages due an employee, and as RSA 275:43 V considers vacation

pay to be wages, when due, if a matter of employment practice or policy, or both, and as this Department finds that the claimant failed to prove by a preponderance of the evidence that she is due any vacation pay, it is hereby ruled the Wage Claim is invalid.

Melissa J. Delorey
Hearing Officer

Date of Decision: August 20, 2014

Original: 
cc: Royalty Inn

MJD/kl